

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE JURISDICTION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OVER COAL BED METHANE-PRODUCED GROUND WATER; CREATING A TEMPORARY PERMIT FOR THE BENEFICIAL USE OF COAL BED METHANE-PRODUCED GROUND WATER; ESTABLISHING AN APPLICATION FEE; REQUIRING MONITORING; AMENDING SECTIONS 85-2-306, 85-2-508, AND 85-2-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislative findings -- policy. (1) The legislature finds that:

(a) pursuant to Article IX, section 3, of the Montana constitution, all existing rights to the use of state waters are recognized and confirmed, and the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses;

(b) coal beds are important regional aquifers in water-scarce southeastern Montana, especially in the Powder River basin controlled ground water area. Coal aquifers are often the only practical source of fresh water for domestic, stock, and agricultural uses by the people in the area.

(c) coal bed methane development could cause severe hardship to local water users. Additionally, the interrelationships among aquifers, along with future precipitation patterns, could cause unpredictable results.

(d) water rights and hydrogeology are not within the ordinary technical expertise of the board of oil and gas conservation. These matters are ordinarily dealt with by the department of natural resources and conservation and the bureau of mines and geology.

(e) because coal bed methane extraction requires extensive ground water withdrawals to lower ground water levels and reduce water pressure in the coal beds with the intent of lowering water levels in the aquifers, it cannot be considered conventional gas production.

(2) It is the policy of the legislature to protect ground water and existing water rights for the health, safety, and welfare of the people of Montana.

1 **NEW SECTION. Section 2. Temporary permit for ground water produced from coal bed methane**

2 **well -- exempt from review.** (1) The department shall issue a temporary permit upon receipt of an application
3 that complies with this section for the use of ground water produced from a coal bed methane well for the
4 following beneficial uses:

- 5 (a) stock water;
6 (b) dust suppression;
7 (c) domestic use; or
8 (d) irrigation if there are no return flows to surface water.

9 (2) Except for the requirements of 85-2-307 through 85-2-311, the requirements of this part apply to the
10 temporary permit application. The department shall also require that:

11 (a) permits be issued only to landowners or residents within the Powder River basin controlled ground
12 water area; and

13 (b) an applicant pay an \$800 application fee.

14 (3) (a) Temporary permits may be issued for up to 2 years.

15 (b) A temporary permit may be renewed if:

- 16 (i) the requirements of this part are met, including the requirements of 85-2-307 through 85-2-311; and
17 (ii) an application fee of \$800 is paid.

18 (4) Temporary permits or renewals issued under this section expire January 1, 2013, and no permits or
19 renewals may be issued after that date.

20 (5) Temporary permits and renewals issued under this section must comply with the provisions of
21 85-2-401.

22 (6) For each coal bed methane well that is a source of ground water for an appropriation under this
23 section, the coal bed methane producer shall:

- 24 (a) equip the well with a flow recording device;
25 (b) maintain flow records;
26 (c) record the amount of water allocated to each temporary permitholder; and
27 (d) report to the department quarterly flow records and allocations.

28
29 **Section 3.** Section 85-2-306, MCA, is amended to read:

30 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground

1 water may be appropriated only by a person who has a possessory interest in the property where the water is
2 to be put to beneficial use and exclusive property rights in the ground water development works.

3 (b) If another person has rights in the ground water development works, water may be appropriated with
4 the written consent of the person with those property rights or, if the ground water development works are on
5 national forest system lands, with any prior written special use authorization required by federal law to occupy,
6 use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,
7 withdrawal, use, or distribution of water under the certificate.

8 (c) If the person does not have a possessory interest in the real property from which the ground water
9 may be appropriated, the person shall provide to the owner of the real property written notification of the works
10 and the person's intent to appropriate ground water from the works. The written notification must be provided to
11 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
12 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
13 requirement only and does not create an easement in or over the real property where the ground water
14 development works are located.

15 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

16 (a) according to a permit received pursuant to 85-2-508; ~~or~~

17 (b) according to the requirements of an order issued pursuant to 85-2-507; or

18 (c) according to a permit issued pursuant to [section 2].

19 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
20 appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons
21 a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source
22 from two or more wells or developed springs exceeding this limitation requires a permit.

23 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water
24 for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the
25 department through its offices.

26 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate
27 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A
28 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the
29 department within 30 days of notification of defects or within a further time as the department may allow, not to
30 exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refileing a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit

subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 4. Section 85-2-508, MCA, is amended to read:

"85-2-508. Controlled ground water areas -- permits to appropriate. (1) A person may appropriate ground water in a controlled ground water area by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; ~~or~~

(b) following the requirements of an order issued pursuant to 85-2-507; or

(c) applying for and receiving a permit pursuant to [section 2].

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift, in the case of pumping developments, or within a reasonable or feasible reduction of pressure, in the case of artesian developments."

Section 5. Section 85-2-510, MCA, is amended to read:

"85-2-510. Production of water from oil and gas wells -- hearings -- jurisdiction of board of oil and gas conservation. ~~Within~~ (1) Except as provided in subsection (4), within any designated or modified controlled ground water area or subarea ~~wherein~~ where oil ~~and/or~~ or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil ~~and/or~~ or gas withdrawals, ~~such the~~ the production of water ~~shall be~~ is under the prior jurisdiction of the board of oil and gas conservation.

(2) Hearings pertaining to the production, use, or disposal of water from those wells ~~shall~~ must be held by that board in accordance with the procedures established by that board.

(3) The department may petition the board of oil and gas conservation for hearings in regard to those

1 operations, and it ~~shall~~ must be notified by the board of oil and gas conservation of those hearings instigated by
2 other parties when those hearings involve operations within a controlled ground water area or subarea.

3 (4) Within the Powder River basin controlled ground water area established pursuant to 85-2-506, where
4 coal bed methane wells produce either fresh, brackish, or saline ground water the volume of production of which
5 is dependent entirely on the coal bed methane withdrawals, the ground water is under the exclusive jurisdiction
6 of the department for issuing beneficial use permits."

7
8 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
9 as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections
10 1 and 2].

11
12 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are severable from the invalid applications.

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16 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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